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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: PROTEGERITY CORPORATION
AND PROTEGERITY USA, INC., PATENT
LITIGATION

No.: 3:15-md-02600-JD

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED]
ORDER**

Date: April 1, 2015
Time: 1:30 pm
Place: Courtroom 11

Honorable James Donato

1 The Parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT
 2 STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the
 3 Northern District of California dated July 1, 2011, and Civil Local Rule 16-9.

4 **1. JURISDICTION & SERVICE**

5 *The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's
 6 counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any
 7 parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.*

8 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1338, 2201 and 2202.
 9 Plaintiffs, Protegility Corporation (“Protegility”) and Protegility USA, Inc. (“PUSA”)¹, do not dispute
 10 that this Court has personal jurisdiction over these matters. Issues of personal jurisdiction and venue
 11 exist as to certain Defendants relating to the courts from which the actions were transferred, which
 12 implicate the location of the trial following remand from the MDL. These matters were consolidated
 13 in this District under 28 U.S.C. § 1407 pursuant to the MDL No. 2600 Transfer Order. (Dkt. No. 1.)
 14 Each Defendant has been served.

15 **2. FACTS**

16 *A brief chronology of the facts and a statement of the principal factual issues in dispute.*

17 **Undisputed Facts:**

18 1. This action concerns U.S. Patent No. 8,402,281 (“the ‘281 Patent”), entitled “Data
 19 Security System for a Database,” and U.S. Patent No. 6,321,201 (“the ‘201 Patent”), entitled “Data
 20 Security System for a Database Having Multiple Encryption Levels Applicable on a Data Element
 21 Value Level” (collectively “the Patents”), published copies of which are attached, for example, to
 22 *Protegility Corp. v. Dataguisse*, No. 3:14-cv-04283 (Dkt. No. 1).²

23 ¹ PUSA is a party to certain actions and it is disputed at least to some of those actions whether
 24 PUSA has standing. Protegility Corporation intends to seek leave to add its wholly-owned
 25 subsidiary, Protegility USA, Inc., as a Party-Plaintiff to all cases where Protegility USA, Inc. is not a
 26 listed party.

27 ² Protegility has also accused Trustwave of infringing U.S. Patent Nos. 7,325,129 (“the ‘129
 28 Patent”), 7,490,248, (“the ‘248 patent”), and 6,963,980 (“the ‘980 patent”) in *Protegility Corp v.
 Trustwave Holdings, Inc.*, No. 3:15-cv-00969-JD. It is Defendants’ position that these patents are
 not related to the ‘201 and ‘281 patents, do not implicate common issues across multiple defendants
 and do not form the basis for the MDL transfer order. The Defendants request that this portion of the
 case be stayed pending resolution of the disputes associated with the ‘201 and ‘281 patents. In the

2. Protegriity Corp. is located in the Cayman Islands.

2 3. Protegity USA, Inc. is located in Stamford, Connecticut.

3 4. This consolidated action consists of sixteen parties opposing Protegriity and, in some
4 instances, also opposing PUSA (collectively, “Defendants”)³ as follows:

- a. Informatica Corporation (“Informatica”), a Delaware corporation headquartered in Redwood City, California.
- b. Dataguise, Inc. (“Dataguise”), a Delaware corporation headquartered in Fremont, California.
- c. Square, Inc. (“Square”), a Delaware corporation headquartered in San Francisco, California.
- d. Skyhigh Networks, Inc. (“Skyhigh”), a Delaware corporation headquartered in Campbell, California.
- e. IPS Group, Inc. (“IPS”), a California corporation headquartered in San Diego, California.
- f. Prime Factors, Inc. (“Prime Factors”), a Georgia corporation with its principal place of business and headquarters in Eugene, Oregon.
- g. Shift4 Corporation (“Shift4”), a Nevada corporation headquartered in Las Vegas, Nevada.

alternative, the Defendants, other than Trustwave, request that these patents be placed on a separate track such that claim construction briefing on these patents occurs independently of the '201 and '281 patents and a separate claim construction hearing is scheduled. Protegriaty objects to this request. It is Protegriaty's position that the Patents involve similar technology with the '129, '248, and '980 Patents. Therefore, it is Protegriaty's position that the Parties would benefit from conducting claim construction of all patents at a single time (which Protegriaty successfully did in previous litigation with three other defendants in a consolidated claim construction hearing).

³ For ease of reference, declaratory judgment plaintiffs are referred to herein as Defendants and Protegriaty is referred to as Plaintiff. In addition, Protegriaty Corporation and Protegriaty USA, Inc. are both described herein as the Plaintiff even though Protegriaty USA, Inc. is not a plaintiff in half of the actions.

1 h. Perspecsys Inc. (“Perspecsys”), a privately held Corporation, incorporated in
2 the state of Delaware, with headquarters in Virginia, USA, and Mississauga,
3 Canada.

4 i. Epicor Software Corporation (“Epicor”), a Delaware corporation
5 headquartered in Austin, Texas.

6 j. AJB Software Design, Inc. (“AJB”), a Canadian corporation headquartered in
7 Mississauga, Canada.

8 k. TransFirst, LLC (“TransFirst”), a Delaware Limited Liability Company with a
9 principal place of business in Broomfield, Colorado and executive
10 headquarters in Dallas, Texas.

11 l. Corduro, Inc. (“Corduro”), a Texas corporation headquartered in Southlake,
12 Texas.

13 m. Trustwave Holdings, Inc. (“Trustwave”), a Delaware corporation
14 headquartered in Chicago, Illinois.

15 n. TokenEx, LLC (“TokenEx”), an Oklahoma corporation headquartered in
16 Tulsa, Oklahoma.

17 o. Netskope, Inc. (“Netskope”), a Delaware corporation headquartered in Los
18 Altos, California.

19 p. Vaultive, Inc. (“Vaultive”), a Delaware corporation headquartered in Boston,
20 Massachusetts.

21 **Disputed Factual Issues:**

22 1. Whether or not Protegry owns the Patents and has standing.

23 2. Whether or not PUSA is an exclusive licensee to the Patents and has standing.

24 3. Whether any Defendants directly and/or indirectly infringe any claim of the Patents.

25 4. Whether or not Protegry has been damaged by any Defendants’ alleged
26 infringement and, if so, whether or not Protegry is entitled to a reasonable royalty and/or lost
27 profits.

28

1 5. Whether or not Protegrity is entitled to injunctive relief, damages, and attorneys' fees
 2 and/or costs.

3 6. Whether this is an exceptional case under 35 U.S.C. § 285.

4 7. The identification of any other relief to which Defendants and/or Protegrity are
 5 entitled.

6 8. Whether or not Protegrity is in the business of making and selling, among other
 7 things, data security systems.

8 9. Whether the Patents are valid or invalid and/or enforceable or unenforceable based on
 9 failure to meet the requirements set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

10 10. Whether the Patents are valid or invalid and/or enforceable or unenforceable or
 11 whether Protegrity's claims are barred based on additional defenses to be asserted by Defendants in
 12 their answers (laches, waiver, etc.).

13 11. Whether or not Protegrity developed software embodying the patented features of the
 14 Patents.

15 12. Whether any damages are limited pursuant to 35 U.S.C. § 287(a).

16 **3. LEGAL ISSUES**

17 *A brief statement, without extended legal argument, of the disputed points of law, including
 reference to specific statutes and decisions.*

18 The principal legal issues that the Parties dispute are:

19 1. The proper construction of the terms in the asserted claims of the Patents;
 20 2. As to each Defendant, whether the Defendant directly infringes one or more claims of
 21 the Patent under 35 U.S.C. §271;⁴

22
 23 ⁴ Protegrity has not yet responded to the Prime Factors and Square declaratory judgment actions and,
 24 thus, has not yet asserted whether it contends those Defendants infringe. In addition, Protegrity has
 25 answered the Skyhigh, TransFirst, and IPS declaratory judgment actions, but has not counterclaimed
 26 with any allegations of infringement. Once the stay is lifted in Skyhigh, Protegrity intends to amend
 27 its answer to include a counterclaim for infringement. Moreover, Protegrity filed a new action
 28 alleging infringement against Skyhigh in Connecticut. It has not yet amended its answer in the first-
 filed Skyhigh declaratory judgment action because that case was stayed. Additionally, Protegrity
 purports to have sought technical information from Defendants, including IPS, and will assert
 infringement as counterclaims in any case that infringement is not yet alleged if the investigations
 reveal infringement.

1 3. As to each Defendant accused of indirect infringement, whether the Defendant
 2 indirectly infringes one or more claims of the Patent under 35 U.S.C. §271;

3 4. As to each Defendant accused of willful infringement, whether, under the circumstances
 4 of this case, any infringement found to exist by that Defendant was willful;

5 5. Whether the claims of the Patents are invalid under 35 U.S.C. §§ 101, 102, 103, and/or
 6 112;

7 6. Whether Protegry's claims of patent infringement are barred by the doctrine of laches,
 8 equitable estoppel, and/or waiver;

9 7. As to each Defendant, if liability is established, whether Protegry is entitled damages in
 10 the form of a reasonable royalty and/or lost profits, and whether such damages are limited by 35
 11 U.S.C. § 286-288 and/or 28 U.S.C. § 1498 and, if so, to what extent;

12 8. As to each Defendant, if liability and damages are established, to what extent Protegry is
 13 entitled to recover enhanced damages;

14 9. As to each Defendant, if liability is established, whether Protegry has established facts
 15 and/or a legal basis sufficient to permit the Court to grant equitable or injunctive relief against the
 16 Defendant under 35 U.S.C. § 283; and

17 10. Whether any of the Parties are entitled to recover attorneys' fees and costs associated with
 18 this lawsuit.

19 **4. MOTIONS**

20 *All prior and pending motions, their current status, and any anticipated motions.*

21 **Plaintiffs' position:**

22 Protegry is amenable to early resolution of Dataguise's and Prime Factors' ⁵ § 101 Motions
 23 to Dismiss, so long as all Defendants join in the motion and are subject to the doctrine of collateral
 24 estoppel and claim preclusion in any attempt to present the issue afterwards. Protegry strongly
 25

26 **5 Protegry's Position:** In Prime Factors' Renewed Motion to Dismiss the First Amended
 27 Complaint, Prime Factors' argument regarding Section 101 is identical to Dataguise's Motion to
 28 Dismiss under Section 101.

1 opposes staying this matter on the basis of the §101 Motion. Joinder of all Defendants in these two §
2 101 Motions to Dismiss would be the most expedient use of the Court's time and resources.

3 Protegriity further objects to staying this action pending Covered Business Method Patent
4 ("CBM") Review. Only one of the CBM Petitions directed to only one of the patents-at-issue has
5 been granted for review and both the Petitioner (Square) and the Patent Owner (Protegriity) have
6 filed requests for rehearing of that decision. No decision on any of the '201 Patent CBM Petitions
7 has been issued and it is speculative as to if the PTAB would even grant review of this more narrow
8 and more extensively previously examined patent. Additionally, the litigation should not be stayed
9 based on the work of only three of the defendants when none of the other defendants have agreed to
10 be subject to the estoppel provisions of the CBM reviews under 35 U.S.C. 325(e).

11 Protegriity intends to file motions to compel against all Defendants that it has served
12 discovery regarding joint defense agreements, as in some cases, that issue has been pending for
13 many months and not yet resolved. Additionally, Protegriity is considering filing at least one motion
14 for preliminary injunction and hereby reserves the right to file motions for preliminary injunctions
15 against any Defendant.

16 Lastly, although Epicor's Motion to Stay was granted by a Magistrate, Protegriity filed
17 objections to the Magistrate's ruling, which objections are still pending. Protegriity intends to file a
18 motion for this Court to rule on the pending Objections.

19 **Defendants' position:**

20 Defendants highlight several motions here that promote the efficient resolution of this action.
21 Given that the actions were initiated at differing times in various forums, there are a host of pending
22 motions. Moreover, Defendants have adopted different litigation strategies. For example, certain
23 defendants filed petitions for CBM Review and subsequently moved to stay their respective actions.
24 Other defendants filed motions to dismiss pursuant to 35 U.S.C. § 101 on the ground that the Patents
25 are directed to patent-ineligible subject matter. Still others have moved to dismiss their actions for
26 lack of personal jurisdiction or dismiss certain of the claims for failure to state a claim. Defendants
27 suggest that the Court address the motions to stay and/or Dataguise's dispositive motion to dismiss

1 before addressing the other motions. Defendants further believe that discovery should remain stayed
 2 pending resolution of the motions to stay and/or the dispositive motion to dismiss.

3 Defendants, other than Dataguise, believe that the Court should address the motions to stay
 4 first and stay this case pending CBM Review.⁶ Informatica, Square, and Epicor have initiated CBM
 5 Review of the '281 and '201 Patents and the first petition for CBM Review was instituted on March
 6 5, 2015, as to all claims of the '281 Patent, including based upon a finding that all claims are invalid
 7 as directed to patent-ineligible subject matter. The deadline for the Patent Appeal and Trial Board to
 8 issue decisions on institution on the remaining petitions for CBM Review ranges between April 23,
 9 2015, and June 10, 2015. Informatica, Square, and Epicor filed Motions to Stay pending their
 10 respective CBM Reviews. The District of Connecticut granted Epicor's Motion to Stay on
 11 December 16, 2014 (Dkt. No. 72) and Epicor believes this stay should remain in place. The Square
 12 and Informatica actions were stayed pending the MDL proceeding before briefing was complete on
 13 their motions to stay. Perspecsys also has a fully-briefed motion for stay pending based upon the
 14 CBM Reviews filed by Informatica, Square, and Epicor. Defendants request guidance from the
 15 Court regarding resolution of the motions to stay, including the timing for a hearing and preferred
 16 approach for submitting the briefing.

17 Dataguise requests that its fully briefed Motion to Dismiss pursuant to Section 101 be heard
 18 first, on a date that is convenient for the Court, as a potentially dispositive matter. The motion has
 19 been fully briefed since November and multiple hearing dates set. A hearing was set for February
 20 13, 2015, but was taken off-calendar on February 9, 2015, following the MDL transfer order in
 21 response to a request from Protegrity indicating that other defendants may be interested in joining or
 22 filing their own motions to dismiss pursuant to Section 101. At this time, no other Defendant
 23 foresees filing a motion to dismiss pursuant to Section 101.

24 Prime Factors has filed a motion to dismiss for lack of personal jurisdiction; the court granted
 25 discovery on the motion and held an evidentiary hearing on the motion to dismiss on February 4,
 26

27 ⁶ Dataguise believes the Court should address its dispositive motion to dismiss first, and takes no
 28 position on the motions to stay.

1 2015. The motion to dismiss for lack of personal jurisdiction relates to whether Protegrity has
 2 standing under Connecticut's long-arm statute to bring suit in Connecticut. For example, in the
 3 order granting Dataguise's motion to transfer, Judge Bryant commented that "[i]t should also be
 4 noted that since the Plaintiff is a foreign corporation, it is doubtful whether it could avail itself of the
 5 Connecticut Long Arm Statutes; a prerequisite for this Court to exercise personal jurisdiction over
 6 Defendant." *Protegrity Corporation v. Dataguise, Inc.*, No. 3:14-cv-04283, Dkt. No. 56 (D. Ct.
 7 Sept. 3, 2014). Judge Meyer has already invested significant resources in evaluating this issue and
 8 holding a hearing on the motion. As this is a point of law specific to Connecticut, Prime Factors
 9 intends to file a motion with this Court to request remand to Judge Meyer for the sole purpose of
 10 deciding the motion to dismiss for lack of personal jurisdiction. Resolution of this motion by Judge
 11 Meyer could provide helpful insight to this Court as other Defendants may file similar motions. For
 12 example, Vaultive may also file a similar motion should this case not be stayed.

13 Similarly, Corduro filed a motion to dismiss for lack of personal jurisdiction on January 13,
 14 2015. After Protegrity's first request to take jurisdictional discovery, the court stayed discovery and
 15 the court did not rule on Protegrity's second request to take jurisdictional discovery prior to the case
 16 being transferred in the MDL. The motion to dismiss relates to whether Corduro has sufficient
 17 contacts with Connecticut for the court to exercise personal jurisdiction over Corduro. Connecticut's
 18 laws as to sufficient contacts, particularly as to Internet websites, differ from most forums. Since
 19 this is a point of law specific to Connecticut and Judge Shea is already familiar with the motion,
 20 Corduro intends to file a motion with this Court to request remand to Judge Shea for the sole purpose
 21 of deciding the motion to dismiss for lack of personal jurisdiction.

22 **Decided/Pending/Anticipated motions:**

23 • Motion to Stay and Objections to Stay

Movant	Motion	Date Filed	Status
Epicor	Protegrity's Objections to the Magistrate's Ruling on Multiple Pending Motions including Motion to Stay	12/30/14	Reply filed 1/6/2015; case transferred to N.D. CA before ruling issued.
Informatica	Motion to Stay Pending Covered Business Method Review	11/12/14	Stayed pending MDL determination; motion and

1			opposition papers submitted, but action stayed before reply due. (Dkt. Nos. 75, 79, 82.)	
2				
3	Perspecsys	Motion to Stay Pending Covered Business Method Review	12/23/14	Fully briefed. (Dkt. Nos. 84, 85, 86, 87, 88.)
4				
5	Square	Motion to Stay Pending Covered Business Method Review	10/28/2014	Stayed pending MDL determination; motion and opposition papers submitted, but action stayed before reply due. (Dkt. Nos. 22, 23, 24 in 3:14-cv-03423-JD)
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9 • Motion to Dismiss on the ground that the Patents are invalid under 35 U.S.C. § 101

Movant	Motion	Date Filed	Status
Dataguise	Motion to Dismiss on the ground that the Patents in Suit are invalid under 35 U.S.C. § 101	10/23/14	Fully briefed and ready for argument and decision.
Prime Factors	Prime Factors filed a motion to dismiss that addressed multiple grounds, including lack of patentable subject matter. A decision on the personal jurisdiction aspect of the motion would moot the remaining grounds, including the Section 101 argument.	11/12/14	Judge Meyer conducted an evidentiary hearing and oral argument on 02/04/15 that focused on the jurisdictional issues. (15-cv-00968- JD Docket No. 89).

17 • Motion to Dismiss for Lack of Personal Jurisdiction

Movant	Motion	Date Filed	Status
Corduro	Motion to Dismiss for Lack of Personal Jurisdiction	01/13/15	Fully briefed.
Prime Factors	(1) Defendant Prime Factors, Inc.'s Renewed Motion to Dismiss Plaintiffs' First Amended Complaint for Lack of Personal Jurisdiction, Improper Venue, or Alternatively, to Transfer the Case to Proper Venue, and Failure to State a Claim for Which Relief May Be Granted and Motion to Dismiss Based on Lack of Patentable Subject Matter and Notice of	(1) 11/12/14	(1) Judge Meyer conducted an evidentiary hearing and oral argument on 02/04/15 (15-cv-00968- JD Docket No. 89).

1	Incorporation and Adoption (15-cv-00968- JD Docket No. 76) ⁷		
2	(2) Defendant Protegriaty USA, Inc.'s Motion to Dismiss and Alternative Motion to Transfer Venue and Memorandum of Law in Support (15-cv-00929-JD Docket No. 12)	(2) 06/16/14	(2) Stayed pending resolution of motion to dismiss in Connecticut
3	Skyhigh	(1) Motion to Dismiss or In the Alternative, to Transfer to the Northern District of California under First-to-File rule and 28 U.S.C. §1404.	(1) 01/28/15
4		(2) Amended Complaint filed by Protegriaty Corp.	(2) 02/18/15
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20 • Motion to Dismiss Indirect/Willful Infringement Claims

Movant	Motion	Date Filed	Status
Informatica	Motion to Dismiss Protegriaty's Claims of Indirect and Willful Infringement	1/23/14	Stayed pending MDL determination; fully briefed. (Dkt. Nos. 27, 33, 36, 82.)

24 ⁷ This is the third motion to dismiss that Prime Factors has filed. The initial motion to dismiss was
25 filed on March 24, 2014 (15-cv-00968 Docket No. 33). The second motion to dismiss was filed on
26 August 15, 2014, following plaintiff's amendment of the complaint and the addition of PUSA as a
27 party plaintiff (15-cv-00968 Docket No. 59). After scheduling a hearing on the motions to dismiss,
the Connecticut Court denied both motions with leave to renew on September 30, 2014 (15-cv-00968 Docket No. 70). Prime Factors has also moved to dismiss Protegriaty's claims for indirect and
willful infringement and under Section 101.

1	Prime Factors	Prime Factors filed a motion to dismiss that addressed multiple grounds, including for failure to state a claim as to indirect and willful infringement. A decision on the personal jurisdiction aspect of the motion would moot the remaining grounds.	11/12/14	Judge Meyer conducted an evidentiary hearing and oral argument on 02/04/15 that focused on the jurisdictional issues. (15-cv-00968- JD Docket No. 89).
6	Trustwave	Motion to Dismiss Plaintiff's Indirect and Willful Infringement Allegations for Failure to State a Claim	03/06/14	Pending
7	Skyhigh	Skyhigh filed a motion to dismiss that addressed multiple grounds, including for failure to state a claim as to indirect and willful infringement. A decision on the motion to dismiss under the first-to-file rule would moot the issues relating to the remaining grounds.	01/28/15	Stayed pending MDL determination; motion and opposition papers submitted, but action stayed before reply due. (Case No. 3:14-cv-01814-AWT Dkt Nos. 16, 17, 18, 19, 22).
12	AJB	Motion to Dismiss Protegrity's Claims for Indirect Infringement, Willful Infringement and Induced Infringement	03/04/14	Granted by Judge Chatigny on February 3, 2015.

15 • Miscellaneous Motions

Movant	Motion	Date Filed	Status
Corduro	Corduro intends to file a motion for suggestion for remand to Judge Shea for a decision on the motion to dismiss for lack of personal jurisdiction.	N/A	N/A
Prime Factors	(1) Plaintiffs' Protegrity Corporation and Protegrity USA, Inc.'s Motion to Seal Plaintiffs' Licensing/Board Resolutions Documents (15-cv-00968- JD Docket No. 76) (2) Prime Factors intends to file a motion for suggestion for remand to Judge Meyer for a decision on motion to dismiss for lack of personal jurisdiction.	(1) 02/05/15	(1) Stayed after transfer and entry of case management order before a response was due (15-cv-00968- JD Docket Nos. 90, 93)

25 **Prior substantive motions and their outcomes:**

Movant	Motion	Date Filed	Outcome
Dataguise	Motion to Dismiss or Transfer	11/1/13	Case transferred to the Northern District of

Movant	Motion	Date Filed	Outcome
Epicor	(1) Epicor's Motion for Protective Order	(1) 04/29/14	California (Dkt. No. 56.) (1) Granted in large part on 8/6/14 (Dkt. No. 40.)
	(2) Epicor's Motion to Compel Protegriaty to Disclose its Infringement Contentions	(2) 07/31/14	(2) Denied without prejudice to renew 12/16/14 (Dkt. No. 72.)
	(3) Protegriaty's Motion to Compel Document Production	(3) 09/16/14	(3) Denied without prejudice to renew 12/16/14 (Dkt. No. 72.)
	(4) Epicor's Motion for Expedited Status Conference	(4) 09/17/14	(4) Denied without prejudice as moot (Dkt. No. 72.)
	(5) Epicor's Motion to Stay Litigation Pending Covered Business Method Reviews	(5) 09/17/14	(5) Granted 12/16/14 (Dkt. No.72.) ⁸
	(6) Epicor's Motion for Protective Order and Motion to Quash Plaintiff's Subpoena	(6) 12/1/14	(6) Granted solely with respect to the timing of the deposition in light of stay imposed (Dkt. No. 72.)
	(7) Protegriaty's Emergency Motion to Compel Epicor to Produce Bruce Schneier for Deposition	(7) 12/11/14	(7) Denied without prejudice to renew 12/16/14 (Dkt. No. 72.)
Informatica	(1) Motion to Transfer Venue	(1) 01/23/14	(1) Case transferred to the Northern District of California. (Dkt. No. 43.)
	(2) Motion to Dismiss Protegriaty's Complaint Under Rule 12(B)(1) for Lack of Standing, or in the Alternative, to Stay the Action	(2) 02/27/14	(2) Motion withdrawn on October 9, 2014. (Dkt. No. 71.)
PerspecSys	(1) Motion to stay pending Voltage trial and pending covered business method review;	(1) 12/24/13	(1) Case stayed until May 1, 2014 pending Voltage trial. (Dkt. No. 41.)

⁸ Epicor's Motion to Stay was granted by a Magistrate. On December 30, 2014, Protegriaty filed its Objections to the Ruling [See Dkt. 73] and on January 6, 2015, Epicor filed its Response to Protegriaty's Objections to the Ruling [See Dkt. 76]. Those objections are still pending and Protegriaty intends to file a motion to have this Court rule on the Objections.

1	Movant	Motion	Date Filed	Outcome
2		(2) Renewed motion to stay pending covered business method review;	(2) 4/22/14	(2) Motion withdrawn due to settlement on 5/12/14 (Dkt. No. 57.)
3		(3) Renewed Motion to stay pending covered business method review;	(3) 5/28/14	(3) Motion withdrawn due to settlement on 7/7/14 (Dkt. No. 64.)
4		(4) Motion to stay pending MDL transfer.	(4) 11/17/14	(4) Motion denied without prejudice on 12/10/14 (Dkt. No. 82.)
5	Prime Factors	(1) Defendant Prime Factors, Inc.'s Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction, Improper Venue, or Alternatively, to Transfer the Case to Proper Venue, and Failure to State a Claim for Which Relief May Be Granted (15-cv-00968 Docket No. 33)	(1) 03/24/14	(1) Denied with leave to renew on September 30, 2015 (15-cv-00968 Docket No. 70)
6		(2) Defendant Prime Factors, Inc.'s Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction, Improper Venue, or Alternatively, to Transfer the Case to Proper Venue, and Failure to State a Claim for Which Relief May Be Granted (15-cv-00968 Docket No. 59)	(2) 08/15/14	(2) Denied with leave to renew on September 30, 2015 (15-cv-00968 Docket No. 70)
7		(3) Defendant Prime Factors, Inc.'s Emergency Motion for Protective Order by Prime Factors, Inc. (15-cv-00968 Docket No. 51)	(3) 07/25/14	(3) Granted on July 29, 2014 (15-cv-00968 Docket No. 53)
8		(4) Plaintiff Protegriity Corporation's Emergency Motion for Clarification on Order on Motion for Protective Order (15-cv-00968 Docket No. 54)	(4) 08/01/14	(4) Granted on August 4, 2014 (15-cv-00968 Docket No. 56)
9		(5) Plaintiff Protegriity Corporation and Protegriity USA, Inc.'s Motion to Seal Confidential Version of Plaintiffs' Response in Opposition to Motion to Dismiss 1st Amended Complaint and Exhibits B, D, E, F, and G (15-cv-	(5) 09/05/14	(5) Denied with leave to renew on September 9, 2014 (15-cv-00968 Docket No. 63)

Movant	Motion	Date Filed	Outcome
	00968 Docket No. 61)		
	(6) Joint Motion to Seal (Renewed) Exhibits to Responses/Replies to Motion to Dismiss (15-cv-00968 Docket No. 64)	(6) 09/19/14	(6) Granted on September 22, 2014 (15-cv-00968 Docket No. 68)
	(7) Defendant Prime Factors, Inc.'s Unopposed Emergency Motion to Stay Regarding Order on Motion to Dismiss (15-cv-00968 Docket No. 72)	(7) 10/08/14	(7) Granted on October 9, 2014 (15-cv-00968 Docket No. 73)
	(8) Joint Motion to Seal Plaintiffs' [Confidential] Opposition to Defendant's Renewed Motion to Dismiss (15-cv-00968 Docket No. 78)	(8) 12/03/14	(8) Granted on December 4, 2014 (15-cv-00968 Docket No. 79)
TokenEx	In addition to the action transferred to this Court from the Northern District of Oklahoma, an action by Protegrity was filed against TokenEx in the District of Connecticut, Case No. 3:13-cv-1719 (MPS), concerning the '281 and '201 Patents.	1/14/15	Dismissed for lack of personal jurisdiction over TokenEx on 1/14/15.

5. AMENDMENT OF PLEADINGS

The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.

In accordance with the Court's Consolidation and Case Management Order, the parties have considered the filing of a consolidated amended complaint by Protegrity in this action. The parties agree that a consolidated amended complaint will not lead to the efficient administration of this action. Defendants in this action include multiple declaratory judgment plaintiffs and, in a number of those lawsuits, Protegrity has either not responded or has not included counterclaims of infringement. As such, Protegrity has not alleged infringement as a cause of action in each of the lawsuits. Protegrity has sought technical information from Defendants and will assert infringement as counterclaims if the investigations reveal infringement. Although Protegrity Corporation intends to seek leave to add its wholly-owned subsidiary, Protegrity USA, Inc., as a Party-Plaintiff to all

1 cases where Protegriity USA, Inc. is not a listed party, currently, both Protegriity entities are not the
 2 same in each lawsuit and the filing of a consolidated amended complaint could potentially lead to
 3 additional motions concerning which Protegriity entity has standing to maintain the action and is
 4 properly a party to the action. In addition, a consolidated amended complaint would require the re-
 5 filing of motions to dismiss that are fully briefed and, potentially, have already been resolved.
 6 Finally, these actions were transferred from courts throughout the United States and, pursuant to 28
 7 U.S.C. § 1407, shall be remanded back to the transferor forum for purposes of trial and pre-trial
 8 proceedings. A consolidated amended complaint introduces new issues relating to jurisdiction for
 9 trial that will complicate rather than simplify this action.

10 Defendants, whose cases did not originate in this District, take the position that should
 11 Protegriity file a consolidated amended complaint, the filing of such consolidated amended complaint
 12 and/or any responsive pleadings, shall not act as a waiver of jurisdictional defenses or a consent to
 13 try the case in transferor court or waiver of remand. To preserve the right to return the case to the
 14 appropriate transferee court following pre-trial proceedings, any party may elect to file a notice of
 15 non-consent that shall preserve that party's automatic right to remand and prevent waiver of remand
 16 or consent to try in the transferor court.

17 **6. EVIDENCE PRESERVATION**

18 *A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of
 19 Electronically Stored Information (“ESI Guidelines”), and confirming that the parties have met and
 20 conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to
 21 preserve evidence relevant to the issues reasonably evident in this action. See ESI Guidelines 2.01
 22 and 2.02, and Checklist for ESI Meet and Confer.*

23 The Parties have agreed to work cooperatively regarding the exchange of electronically
 24 stored information (“ESI”) and intend to comply with the Court’s Standing Order for E-Discovery
 25 and Email Discovery in patent cases. In particular, the Parties have taken appropriate steps to
 26 preserve all evidence that may be relevant to the issues in the present action. The Parties will submit
 27 an agreed upon ESI order by **May 13, 2015**.

28 **7. DISCLOSURES**

29 *Whether there has been full and timely compliance with the initial disclosure requirements of Fed.
 30 R. Civ. P. 26 and a description of the disclosures made.*

1 Protegility proposes that the deadline to exchange Initial Disclosures shall be on or before:
 2 **April 1, 2015.** Defendants propose that the deadline to exchange Initial Disclosures shall be on or
 3 before: **June 10, 2015.**

4 **8. DISCOVERY**

5 *Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or
 6 modifications of the discovery rules, a brief report on whether the parties have considered entering
 7 into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and
 any identified discovery disputes.*

8 Discovery Taken: Discovery is currently stayed pursuant to the Court's Consolidation and
 9 Case Management Order. (Dkt. No. 3.) No discovery has been taken in the vast majority of the
 10 cases. Some discovery has been taken in the Perspecsys, Epicor, Shift4, TransFirst, IPS and
 11 Trustwave actions. Additionally, limited jurisdictional discovery has been taken in the Prime
 12 Factors and TokenEx actions. Protegility believes that discovery should be open immediately after
 13 the Case Management Conference on April 1, 2015. Defendants believe discovery should remain
 14 stayed pending resolution of the motions to stay and/or the dispositive motion to dismiss.

15 Protegility has sought discovery regarding joint defense agreements among the Defendants in
 16 a number of the cases and intends to seek the same discovery in any case in which it has not been
 17 propounded. Additionally, Protegility seeks to compel those Defendants that have not yet produced
 18 discovery response to the requests regarding joint defense agreements. Defendants object to
 19 Protegility's discovery regarding "joint defense agreements."

20 Scope of Anticipated Discovery: With respect to the Parties' claims and defenses, the Parties
 21 expect that discovery will be needed on at least the following subjects: the structure and operation
 22 of and any instructions relating to the accused products; Defendants' customers for the accused
 23 products; financial information relating to Defendants' respective accused products; Defendants
 24 respective knowledge of Protegility, the Patents, and Protegility's research related to the Patents; any
 25 products or services allegedly practicing the Patents, including any Protegility products or services;
 26 substantial noninfringing use and/or noninfringing alternatives for the technology claimed in the
 27 Patents; notice and/or marking with the number of the Patents; evidence of secondary indicia of
 28 nonobviousness of the Patents; date of alleged invention and reduction to practice of the Patents;

1 steps taken and disclosures and statements made during prosecution of the Patents, including any
2 reexaminations; prior art pertaining to the Patents; first disclosure, sale and public use of the
3 technology claimed in the Patents; any licenses or attempted licenses covering the Patents and/or
4 corresponding technology; the extent to which Protegility will claim commercial success of the
5 technology claimed in the Patents; demand for the technology claimed by the Patents; competition
6 and market share for the technology claimed in the Patents; Protegility's manufacturing and
7 marketing capabilities with regard to any Protegility products or services allegedly practicing the
8 Patents; financial information related to any Protegility products or services allegedly practicing the
9 Patents; information related to Protegility's alleged lost profits; information related to Protegility's
10 request for injunctive relief, including alleged irreparable harm, inadequacy of legal remedies, and
11 public interest factors; and communications between Defendants and Protegility.

12 Defendants also expect to request the deposition of the inventor, Ulf Dahl. Defendants
13 understand that Ulf Dahl currently resides in Sweden and is no longer associated with Protegility.
14 Defendants will, therefore, need to seek his deposition in accordance with the Hague Convention.
15 Mr. Dahl has not previously been deposed in any of the earlier actions brought by Protegility.

16 It is Protegility's position that the Parties will need to create a discovery process for the
17 production of source code. Protegility is willing to use the order regarding the production of source
18 code that was entered in the Epicor case. [See Dkt 45]. Notably, Protegility requests a rushed
19 resolution of this issue so that it can include a review of Defendants' source code in its initial
20 infringement contentions.

21 Proposed Limitations or Modifications of the Discovery Rules: The Parties intend to comply
22 with the Court's Standing Order for E-Discovery, Email Discovery in patent cases and Consolidation
23 and Case Management Order. In addition, in view of the Court's Consolidation and Case
24 Management Order (Dkt. No. 28), Defendants propose the following as a part of their discovery
25 plan; however, Protegility objects to the 14 hours to depose the inventor, the limit to 100 hours of
26 depositions of third parties, to Defendants getting 17 hours each to depose Protegility's experts, to
27 the restriction that no single day of deposition last more than 7 hours, and the added time for
28 translation deposition:

- 1 • **Requests for Admission and for Documents:** There will be no limits beyond
2 those set forth in FRCP 36 and 34 for requests for admissions and for requests
3 for production. To the extent there will be common requests for admission
4 and for documents, the Parties intend to coordinate.
- 5 • **Depositions:**
 - 6 ▪ Defendants are willing to treat Protegry USA, Inc. as a party in all
7 actions solely for purposes of counting deposition hours, and
8 Protegry will treat Protegry USA, Inc. as a party for purposes of
9 service of deposition notices and document requests.
 - 10 ▪ Defendants will be entitled to a maximum of 120 hours of deposition
11 of Protegry. This 120 hours includes a maximum of 21 hours of
12 30(b)(6) deposition of Protegry for common issues amongst
13 Defendants and 14 hours of 30(b)(6) deposition of Protegry for non-
14 common issues for each Defendant.
 - 15 ▪ Protegry will be entitled to a maximum of 30 hours of deposition of
16 each Defendant, including a maximum of 14 hours of 30(b)(6)
17 deposition of each Defendant.
 - 18 ▪ Each side is entitled to 100 hours of third party depositions, not
19 including expert or inventor depositions.⁹ Each inventor of the
20 Patents may be deposed for up to 14 hours each collectively by
21 Defendants.¹⁰ As previously noted, Defendants believe the inventor,
22 Ulf Dahl, is located in Sweden and Defendants will need to seek his
23 deposition in accordance with the Hague Convention.
 - 24 ▪ Each Defendant shall be entitled to take up to 7 hours of deposition of
25 each expert per Defendant-specific issue (e.g., infringement, damages,
26 invalidity issues pertaining to a defendant or defendants) that submits a
27 report or may testify on that issue concerning that Defendant. In
28 addition, Defendants collectively shall be entitled to take up to 7 hours
 of deposition of each expert on common issues (e.g., validity issues
 relating to all Defendants) that submits a report or may testify on that
 issue plus each Defendant may take up to an addition 3 hours of
 deposition of the expert on that issue, if needed.¹¹
 - 29 ▪ **Defendants' position:** each party shall be entitled to take up to 7 hours
30 of deposition of each expert per Defendant-specific issue (e.g.,
31 noninfringement, damages) that submits a report or may testify on that
32 issue concerning that Defendant. In the event an expert submits a
33 report or may testify on behalf of more than one Defendant on
34 Defendant-specific issues (e.g., noninfringement, damages), Protegry
35 shall be entitled to 7 hours of deposition of the expert plus up to an
36 additional 3 hours of deposition for each addition Defendant, if

25 ⁹ Protegry objects to this restriction.

26 ¹⁰ Protegry objects to this restriction.

27 ¹¹ Protegry objects to this restriction.

needed. In addition, Protegility shall be entitled to take up to 7 hours of deposition of each expert on common issues (*e.g.*, validity, unenforceability) that submits a report or may testify on the common issue.

- **Protegirty's Position:** each party shall be entitled to take up to 7 hours of deposition of each expert, per the Federal Rules of Civil Procedure. Should additional time be warranted, the parties shall meet and confer and failing resolution, seek resolution from the Court.
- There will be no limits on the number of depositions and no single day of deposition testimony shall last more than 7 hours.¹²
- The number of hours charged to a party taking a deposition where the witness testifies in a language other than English shall be fifty percent (50%) the amount of actual time spent on the record.¹³

Interrogatories:

- Each side will be entitled to 20 common interrogatories and each party will be entitled to 15 individual interrogatories. To the extent interrogatories have already been served in certain actions and Protegility has responded to those interrogatories, those interrogatories shall count as individual interrogatories. Defendants in those actions will be permitted to join the 20 common interrogatories and, if the number of interrogatories already served exceeds 10, serve up to 10 additional individual interrogatories.
- An interrogatory directed toward all asserted patents and/or all accused products will count as a single interrogatory. An interrogatory directed toward all allegedly invalidating prior art references and obviousness combinations will count as a single interrogatory.

Electronic Service: The Parties agree to accept service by e-mail to established e-mail distribution lists, with hard copies to follow by overnight mail upon request.

Privilege Log: Attorney-client privileged materials communicated between counsel of record and client after the filing of this lawsuit and/or work product materials generated after the filing of this lawsuit need not be included on a privilege log.

Proposed Protective and E-Discovery Orders: A protective order and ESI order will be required and the Parties are working in good faith to prepare proposed orders for the Court.

Experts: Defendants do not believe that one or more experts under Federal Rule of Evidence 706 is necessary at this time. Protegility has not yet determined whether one or more experts under Federal Rule of Evidence 706

12 Proteg^{ity} objects to this restriction.

13 Protegity objects to this restriction.

1 is necessary at this time.

2

- 3 **Communications with Experts:** Communications between an expert witness
4 for any party and the party's attorneys will be protected to the extent provided
5 under Federal Rule of Civil Procedure 26(b)(4)(C), except that "considered" is
6 replaced by "relied upon" in Federal Rule of Civil Procedure 26(b)(4)(C)(ii).
7 In addition, for the purposes of this case, the provisions of Federal Rule of
8 Civil Procedure 26(b)(4)(C) shall be modified to protect communications
9 between an expert witness for any party and the party to the same extent that it
protects communications between an expert witness for any party and the
party's attorneys, where "considered" is replaced by "relied upon" in Federal
Rule of Civil Procedure 26(b)(4)(C)(ii).
- 10 **Service on Protegrity USA, Inc.:** Protegrity's counsel agrees to accept
11 service of legally valid discovery requests for corporate depositions,
12 documents and other discovery on Protegrity USA, Inc. including in those
13 cases in which it is not a party.

14 **9. CLASS ACTIONS**

15 *If a class action, a proposal for how and when the class will be certified.*

16 N/A.

17 **10. RELATED CASES**

18 *Any related cases or proceedings pending before another judge of this court, or before another court
19 or administrative body.*

20 The consolidated and tag-along cases in the Northern District of California for pretrial proceedings
21 are:

22 Case Name	23 Case No.	24 Date Filed
25 Protegrity Corp. v. AJB Software Design, Inc.	26 3:15-cv-00857-JD	27 Oct. 9, 2013
28 Protegrity Corp. et al. v. Corduro, Inc.	29 3:15-cv-00825-JD	30 July 28, 2014
31 Corduro, Inc. v. Protegrity Corporation et al.	32 3:15-cv-00801-JD	33 Aug. 20, 2014
34 Protegrity Corp. v. Dataguise, Inc.	35 3:14-cv-04283-JD	36 May 17, 2013
37 Protegrity Corp. v. Epicor Software Corp.	38 3:15-cv-00858-JD	39 Dec. 2, 2013
40 Protegrity Corp. v. Informatica Corp.	41 3:14-cv-02588-JD	42 Sept. 25, 2013
43 IPS Group, Inc. v. Protegrity Corp.	44 3:15-cv-00802-JD	45 Jan. 10, 2014
46 Protegrity USA, Inc. et al v. Netskope, Inc.	47 3:15-cv-01065-JD	48 Feb. 18, 2015
49 Protegrity Corp. v. Perspecsys USA, Inc.	50 3:15-cv-00967-JD	51 Sept. 23, 2013
52 Prime Factors, Inc. v. Protegrity USA, Inc.	53 3:15-cv-00929-JD	54 March 24, 2014

1	Protegility Corp. v. Prime Factors, Inc.	3:15-cv-00968-JD	Sept. 23, 2013
2	Shift4 Corp. v. Protegility Corp.	3:15-cv-00860-JD	Oct. 25, 2013
3	Protegility Corp. v. Shift4 Corp.	3:15-cv-00859-JD	Dec. 4, 2013
4	Skyhigh Networks, Inc. v. Protegility Corp.	3:14-cv-03151-JD	July 11, 2014
5	Protegility Corp. et al. v. Skyhigh Networks, Inc.	3:14-cv-01814-JD	Dec. 3, 2014
6	Square, Inc. v. Protegility Corp.	3:14-cv-03423-JD	July 28, 2014
7	TokenEx, LLC v. Protegility Corp.	3:15-cv-00826-JD	July 31, 2014
8	TransFirst, LLC v. Protegility Corp. et al.	3:15-cv-00803-JD	July 30, 2013
9	Protegility Corp v. Trustwave Holdings, Inc.	3:15-cv-00969-JD	Sept. 25, 2013
10	Protegility USA, Inc. et al v. Vaultive, Inc.	3:15-cv-01066-JD	Feb. 18, 2015
11			

12 In addition, a declaratory judgement complaint was filed on March 20, 2015, against
 13 Protegility in this Court, *Vormetric, Inc. v. Protegility Corp.*, No. 3:15-cv-01320-JD, that has not yet
 14 been added as a tag-along case.

15 **11. RELIEF**

16 *All relief sought through complaint or counterclaim, including the amount of any damages sought
 17 and a description of the bases on which damages are calculated. In addition, any party from whom
 18 damages are sought must describe the bases on which it contends damages should be calculated if
 liability is established.*

19 Protegility asserts that it is entitled to collect its lost profits. Alternatively, Protegility asserts
 20 that it is entitled to collect a reasonable royalty for Defendants' infringements.

21 **Lost Profits:** For its lost profits, Protegility will request all "but for" profits lost by Protegility
 22 due to Defendants' infringement during the entire infringing period.

23 **Reasonable Royalty:** For reasonable royalty, Protegility will apply the factors set forth in
 24 *Georgia-Pacific Corp. v. U.S. Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970).

25 Additionally, Protegility seeks preliminary and permanent injunctive relief and alleges that
 26 these are "exceptional" cases under 28 U.S.C. §285 entitling it to an aware of treble damages,
 27 attorneys' fees and costs.

1 Defendants seek a judgment declaring that they have not infringed and are not now infringing,
2 directly or indirectly, literally or by equivalents, or willfully any valid claim of the Patents.
3 Defendants further seek a judgment declaring that the claims of the Patents are invalid. Defendants
4 seek an order enjoining Protegriaty from making any claims that Defendants infringe the Patents or
5 instituting or prosecuting any lawsuit or proceeding which places at issue Defendants' right to make,
6 use, or sell the products that allegedly infringe the Patents. Finally, Defendants requests that the
7 Court adjudge this case as exceptional, and, upon such a judgment, reward Defendants their costs,
8 expenses, and attorneys' fees incurred in bringing and prosecuting this action.

12. SETTLEMENT AND ADR

10 Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including
11 compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position
the parties to negotiate a resolution.

Pursuant to L.R. 3-5, all Parties, except for those listed below, have not met and conferred regarding early settlement and the ADR process selection and have not filed their Stipulation to the ADR process.

- Protegrity and Informatica participated in mediation before the Honorable Edward Infante on January 15, 2015, which was unsuccessful.
- Protegrity and Epicor participated in a settlement conference before the Honorable Joan Margolis on June 18, 2014, which was unsuccessful.
- Protegrity and Square have agreed to private mediation before the Honorable Edward Infante.
- IPS has participated in two mediations with Protegrity. IPS has been engaged in an extended early neutral evaluation with Protegrity and Protegrity requests the Court continue that process. The parties negotiated a Source Code Protective Order, which Magistrate Judge Crawford has entered. The next step in the ENE process was to allow Protegrity to inspect IPS' source. Protegrity requests the case be transferred back to Magistrate Crawford in San Diego solely for the purpose of overseeing the remainder of the ENE. IPS does not believe that partial remand to Magistrate Judge Crawford would be productive at this juncture.

1 • Skyhigh and Protegry filed an ADR certification on October 1, 2014, and have
 2 engaged in informal settlement discussions, but have not reached agreement.
 3 • AJB has had settlement conferences with Protegry and has one scheduled for May 5,
 4 2015 in front of Magistrate Garfinkel in the D. of CT.

5 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

6 *Whether all parties will consent to have a magistrate judge conduct all further proceedings
 including trial and entry of judgment.* YES X NO

7 The Parties do not consent to proceed before a magistrate judge.

8 **14. OTHER REFERENCES**

9 *Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial
 Panel on Multidistrict Litigation.*

10 These cases were transferred to the Northern District of California pursuant to the Judicial
 11 Panel on Multidistrict Litigation's order of February 6, 2015, or because they are tag-along actions
 12 as defined in Rule 1.1(h) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation.

13 **15. NARROWING OF ISSUES**

14 *Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of
 15 evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues,
 claims, or defenses.*

16 Protegry is unaware of any matters that may be narrowed by agreement and disagrees with
 17 Defendants' position regarding the narrowing of issues based on the CBM Reviews. Protegry
 18 requests that claim construction be limited to no more than 8 terms per patent and disagrees with
 19 Defendants' request that it should be limited to asserting only 20 claims across all defendants.

20 Defendants believe the CBM Reviews filed by Square, Informatica, and Epicor, will narrow,
 21 or eliminate, the issues in this case. Defendants further believe that limiting Protegry to asserting
 22 20 unique claims across all Defendants in advance of claim construction will narrow the issues in
 23 this case.

24 **16. EXPEDITED TRIAL PROCEDURE**

25 *Whether this is the type of case that can be handled under the Expedited Trial Procedure of General
 26 Order 64, Attachment A. If all parties agree, they shall instead of this Statement, file an executed
 27 Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance
 28 with General Order No. 64, Attachments B and D.*

1 This action is not appropriate for the Expedited Trial Procedure, especially in light of the
 2 large number of consolidated actions.

3 **17. SCHEDULING**

4 *Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial
 conference and trial.*

5 **Protegry's Position:** Protegry objects to Defendants' proposed schedule, especially to the
 6 extent it delays claim construction activity. Protegry is willing to delay the scheduling a few weeks
 7 only if Defendants are willing to make their source code available on an expedited basis so that
 8 Protegry can incorporate its review of the source code into its respective infringement contentions.
 9 Protegry disagrees that this case should be delayed pending the CBM Petitions and the motions to
 10 stay and/or dispositive motions. Therefore, Protegry proposes the following schedule:

11 **Defendants' Position:** Defendants request guidance from the Court should decide the
 12 motions for stay and/or hear Dataguise's potentially dispositive and fully briefed Motion to Dismiss
 13 pursuant to 35 U.S.C. § 101 as a preliminary matter.. Defendants also request guidance from the
 14 Court on the timing for a hearing and/or briefing on the motions to stay and have not included
 15 proposed dates in the schedule. Defendants have proposed a schedule that permits resolution of
 16 these motions and takes into consideration Prime Factors's request for suggestion for remand and the
 17 timing for a deposition of the inventor.

18 The parties, therefore, offer the following competing scheduling proposals:

Event	Protegry's Proposal	Defendants' Proposal
Section 101 Motion Hearing		To be discussed with the Court
Deadline to file tag-along cases		May 13, 2015
ESI order		May 13, 2015
Hearing on the motions for stay		To be discussed with the Court
Initial Disclosures Pursuant to Rule 26(A)(1)	April 1, 2015	June 10, 2015
Protegry's PLR 3-1 and 3-2 Disclosures	April 15, 2015	September 9, 2015

1	Hearing on pending motions not already resolved ⁸¹⁴		September 23, 2015, if convenient for the Court
2	Defendant's PLR 3-3 and 3-4 Disclosures	June 1, 2015	November 11, 2015
3	Exchange of Proposed Terms for Construction	June 15, 2015	November 24, 2015
4	Exchange of Claim Constructions and Extrinsic Evidence	July 6, 2015	December 18, 2015
5	Joint Claim Construction Statement	July 31, 2015	January 22, 2016
6	Completion of Claim Construction Discovery	August 31, 2015	February 17, 2016
7	Opening Claim Construction Briefs	September 14, 2015	March 2, 2016
8	Responsive Claim Construction Briefs	September 28, 2015	March 30, 2016
9	Reply Claim Construction Briefs	October 5, 2015	April 6, 2016
10	Amended, Final Joint Claim Construction Statement (if necessary)	October 5, 2015	April 13, 2016
11	Claim Construction Tutorial	1 – 2 weeks before Claim Construction Hearing	April 21, 2016, if convenient for the Court
12	Claim Construction Hearing	October 9, 2015	April 28, 2016 if convenient for the Court
13	Further Case Management Conference, if deemed necessary, to discuss, among other things, the filing of	TBD, per Paragraph 14 of the Court's Standing Order for Patent Cases	

⁸¹⁴ Defendants' Position: To the extent briefing on any pending motion is not complete, the parties will file an opposition on 21 days before the hearing, on September 2, if necessary, and a reply 14 days before the hearing, on September 9.

1	dispositive motions, post-claim
2	construction discovery and other
	pre-trial matters

3 **18. TRIAL**

4 *Whether the case will be tried to a jury or to the court and the expected length of the trial.*

5 The Parties request separate jury trials for each action following remand, where applicable, to
 6 the respective transferor districts. The Parties expect the length of each of their trials to be 5-14
 7 days.

8 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

9 *Whether each party has filed the “Certification of Interested Entities or Persons” required by Civil
 10 Local Rule 3-15. In addition, each party must restate in the case management statement the contents
 11 of its certification by identifying any persons, firms, partnerships, corporations (including parent
 12 corporations) or other entities known by the party to have either: (i) a financial interest in the
 subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that
 could be substantially affected by the outcome of the proceeding.*

13 Protegrity has filed a Certificate of Interested Entities in the following cases:

- 14 • *Protegrity Corporation v. Informatica*, Case No.: 3:14-cv-02588 [Dkt. 2] – no parent
 15 company or publicly held corporation owns 10% or more of Protegrity Corporation’s
 stock.
- 16 • *Skyhigh Networks, Inc. v. Protegrity Corporation*, Case No.: 3:14-cv-03151 [Dkt. 21] –
 17 no parent company or publicly held corporation owns 10% or more of Protegrity
 Corporation’s stock. Protegrity Corporation and Protegrity USA have an interest in the
 18 subject matter in controversy.
- 19 • *Protegrity Corporation and Protegrity USA, Inc. v. Skyhigh Networks, Inc.*, Case No.:
 20 3:15-cv-00861 [Dkt. 12] - no parent company or publicly held corporation owns 10% or
 more of Protegrity Corporation’s stock. Protegrity Corporation is Protegrity USA’s
 21 parent corporation.
- 22 • *Square, Inc. v. Protegrity Corporation*, Case No.: 3:14-cv-03423 [Dkt. 21] - no parent
 23 company or publicly held corporation owns 10% or more of Protegrity Corporation’s
 stock. Protegrity Corporation and Protegrity USA have an interest in the subject matter in
 24 controversy.
- 25 • *Protegrity Corporation v. Perspecsys USA, Inc.*, Case No.: 3:15-cv-00967 [Dkt. 2] - no
 parent company or publicly held corporation owns 10% or more of Protegrity
 26 Corporation’s stock.
- 27 • *Protegrity Corporation v. Prime Factors, Inc.*, Case No.: 3:15-cv-00968 [Dkt. 2] – no
 parent company or publicly held corporation owns 10% or more of Protegrity
 Corporation’s stock.
- 28 • *Prime Factors, Inc. v. Protegrity USA, Inc.*, Case No.: 3:15-cv-00929 [Dkt. 14] –

1 Protegriity Corporation is Protegriity USA's parent corporation. Protegriity USA is not a
 2 publicly held company and no publicly held corporation owns 10% or more of Protegriity
 3 Corporation's stock.

- 4 • *Protegriity Corporation v. Epicor Software Corporation*, Case No.: 3:15-cv-00858 [Dkt.
 5 2] – no parent company or publicly held corporation owns 10% or more of Protegriity
 6 Corporation's stock.
- 7 • *Protegriity Corporation v. Shift4 Corporation*, Case No.: 3:15-cv-00859 [Dkt. 2] – no
 8 parent company or publicly held corporation owns 10% or more of Protegriity
 9 Corporation's stock.
- 10 • *Shift4 Corporation v. Protegriity Corporation*, Case No.: 3:15-cv-00860 [Dkt. 24] –
 11 Xcelera, Inc. owns 100% of Protegriity Corporation. Protegriity intends to file a Corrected
 12 Certificate of Interested Entities by **April 15, 2015**.
- 13 • *Protegriity Corporation and Protegriity USA, Inc. v. Corduro, Inc.*, Case No.: 3:15-cv-
 14 00825 [Dkt. 8] - no parent company or publicly held corporation owns 10% or more of
 15 Protegriity Corporation's stock. Protegriity Corporation is Protegriity USA's parent
 16 corporation.
- 17 • *Corduro, Inc. v. Protegriity Corporation and Protegriity USA, Inc.*, Case No.: 3:15-cv-
 18 00801 [Dkt. 15] - no parent company or publicly held corporation owns 10% or more of
 19 Protegriity Corporation's stock. Protegriity Corporation is Protegriity USA's parent
 20 corporation. Protegriity Corporation and Protegriity USA have an interest in the subject
 21 matter in controversy.
- 22 • *TokenEx, LLC v. Protegriity Corporation*, Case No.: 3:15-cv-00826 [Dkt. 15] – no parent
 23 company or publicly held corporation owns 10% or more of Protegriity Corporation's stock.
- 24 • *Transfirst, LLC v. Protegriity Corporation and Protegriity USA, Inc.*, Case No.: 3:15-cv-
 25 00803 [Dkt. 7] - no parent company or publicly held corporation owns 10% or more of
 26 Protegriity Corporation's stock. Protegriity Corporation is Protegriity USA's parent
 27 corporation. Protegriity Corporation and Protegriity USA have an interest in the subject
 28 matter in controversy.
- Protegriity has not filed a Certificate of Interested Entities in *IPS Group, Inc. v. Protegriity
 Corporation*, Case No.: 3:15-cv-00802, but agrees to file it by **April 15, 2015**.

27 The following Defendants have filed their Certification of Interested Entities:
 28

- 1 • Square – Dkt. No. 7, Case No. 3:14-cv-03423-JD (July 30, 2014) – No parent
2 company or publicly held corporation owns 10% or more of Square’s stock.
3 As stated in its Certification of Interested Entities (Dkt. No. 7), pursuant to
4 Civil Local Rule 3-15, the undersigned certifies that as of this date, other than
5 Square and its shareholders, Square has no such interest to report.
- 6 • Informatica – Dkt. No. 5, Case No. 3:14-cv-02588-JD (September 25, 2013)
7 – No parent company or publicly held corporation owns 10% or more of
8 Informatica’s stock. As stated in its Corporate Disclosure Statement filed in
9 the District of Connecticut, pursuant to CT Local Rule 7.1, Informatica’s
10 Counsel of Record certifies that as of that date, Informatica has no such
11 interest to report.
- 12 • Corduro—Dkt. No. 3, Case No. 3:14-cv-02990-N (August 20, 2014). No
13 parent company or publicly held corporation owns 10% or more of Corduro’s
14 stock. Google Ventures 2010 L.P. has a financial interest in the outcome of
15 this controversy.
- 16 • TransFirst—Dkt. No. 2, Case No. 3:14-cv-02727-N (July 30, 2014). No
17 publicly held corporation owns 10% or more of TransFirst’s stock. TransFirst’s parent corporations are: TransFirst Holdings, Inc.; TransFirst Parent Corp.; TransFirst Inc.; Tych Holdings, LLC; Tyche Finance, LLC; Tyche Topco, Inc.; Vista Equity Partners Fund V, L.P.; VEPF V FAF, LP Vista Equity Partners Fund V Executive, L.P.; Vista Equity Associates V, LLC; Vista Equity Partners Fund V.-A, L.P.; and Vista Equity Partners Fund V-B, L.P. The following entities have a financial interest in the outcome of
18 this controversy: Welsh, Carson, Anderson and Stowe X, L.P.; Tommy Rouse.
- 19 • Epicor—Dkt. No. 16, Case No. 3:13-cv-01781-VAB (January 7, 2014). Epicor’s parent company is EGL Holdco, Inc., a subsidiary of Eagle Midco, Inc., which is a subsidiary of Eagle Topco, LP. There is no publicly held
20 corporation that owns 10% or more of Epicor’s stock.
- 21 • Prime Factors – No parent company or publicly held corporation owns 10% or
22 more of Prime Factors’ stock. As stated in its Certification of Interested
23 Entities (3:15-cv-00929-JD Dkt. No. 2), pursuant to Civil Local Rule 3-15, the
24 undersigned certifies that as of this date, other than Prime Factors and its
25 shareholders, Prime Factors has no such interest to report.
- 26 • Trustwave – Defendant Trustwave Holdings, Inc. (“Trustwave”) states that
27 Trustwave has no parent corporation and that there is no publicly held
28 corporation that owns 10% or more of Trustwave’s stock. Pursuant to Civil
Local Rule 3-15, the undersigned certifies that as of this date, other than
Trustwave and its shareholders, Trustwave has no such interest to report.
- 29 • TokenEx - No parent company or publicly held corporation owns 10% or
30 more of TokenEx’s ownership units. As stated in its Certification of Interested
31 Entities filed of record in the action in the Northern District of
32 Oklahoma, pursuant to ND OK Local Rule LCvR 7.1, TokenEx’s Counsel of
33 Record certifies that as of this date, other than TokenEx and its unitholders,
34 TokenEx has no such interest to report.
- 35 • Perspecsys – Dkt. No. 24, Case No. 3:14-cv-01383-JAM (November 18,
36 2013) – Perspecsys Corp., a privately held Canadian Corporation, is wholly

1 owned subsidiary of Perspecsys, Inc. No parent company or publicly held
 2 corporation owns 10% or more of Perspecsys's stock. Pursuant to Civil Local
 3 Rule 3-15, the undersigned certifies that as of this date, other than Perspecsys,
 Perspecsys Corp., and their shareholders, Perspecsys has no such interest to
 report.

4 The remaining Defendants agree to file their Certification of Interested Entities or Persons on
 5 before April 15, 2015.

6 **20. PROFESSIONAL CONDUCT**

7 *Whether all attorneys of record for the parties have reviewed the Guidelines for Professional
 Conduct for the Northern District of California.*

8 All attorneys of record X have have not reviewed the Guidelines for Professional
 9 Conduct for the Northern District of California.

10 **21. OTHER**

11 *Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.*

12 The following CBM Reviews have been filed concerning the '281 and '201 Patents:

13 Patent	14 Date Filed	15 Movant	16 Action	17 Status
18 '281	19 08/29/14	20 Square	21 Square, Inc. v. Protegrity Corp., CBM2014-00182	22 CBM Instituted on March 5, 2015 as to all claims.
23 '201	24 10/24/14	25 Square	26 Square, Inc. v. Protegrity Corp., CBM2015-00014	27 Pending; deadline to issue a decision on institution due May 5, 2015
28 '281	29 10/14/14	30 Informatica	31 Informatica Corp. v. Protegrity Corp., CBM2015-00010	32 Pending; deadline to issue a decision on institution due May 13, 2015
33 '201	34 11/06/14	35 Informatica	36 Informatica Corp. v. Protegrity Corp., CBM2015-00021	37 Pending; deadline to issue a decision on institution due June 2, 2015
38 '201	39 10/01/14	40 Epicor	41 Epicor Software Corp. v. Protegrity Corp., CBM2015- 00002	42 Pending; deadline to issue a decision on institution due April 23, 2015
43 '281	44 10/07/14	45 Epicor	46 Epicor Software Corp. v. Protegrity Corp., CBM2015- 00006	47 Pending; deadline to issue a decision on institution due April

1				30, 2015
2	'201	11/25/14	Epicor	Epicor Software Corp. v. Protegry Corp., CBM2015-00030
3				Pending; deadline to issue a decision on institution due June 10, 2015
4	'281	04/15/2013	Voltage	Voltage Security, Inc. v. Protegry Corp., CBM2015-00002
5				CBM Instituted on November 1, 2013. Case subsequently settled and dismissed
6	'281	05/07/14	Phoenix	Phoenix Payment Systems, Inc. v. Protegry Corp., CBM2015-00014
7				Settled and dismissed
8				

9 22. PATENT L.R. 2-1(B) REQUIREMENTS

10 When the parties confer pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Fed. R. Civ. P. 26, the parties shall discuss and address in the Case Management Statement filed pursuant to Fed. R. Civ. P. 26(f) and Civil L.R. 16-9, the following topics:

12 (1) Proposed Modification of the Obligations or Deadlines Set Forth in the Patent Local
 13 Rules: The Parties have included modifications to the obligations or deadlines set forth in the Patent Local Rules to allow resolution of the motions for stay and/or dispositive motion to dismiss, to ensure fulsome disclosures, and to allow Defendants sufficient time to coordinate on filings and with Protegry to minimize issues to be presented to the Court. Protegry disagrees with this modification as discussed above.

18 (2) Scope and Timing of Claim Construction Discovery: Defendants assert that it is too early for the Parties to know whether claim construction discovery and/or the use of experts for claim construction will benefit this case. Defendants propose that the Parties will meet and confer regarding any necessary claim construction discovery as the case progresses. Proposed deadlines for claim construction discovery have been included in the proposed schedule. Protegry objects to the delayed claim construction activity, especially because the '201 Patent¹⁵ has previously been construed in prior litigation; therefore, claim construction activity should not be overly burdensome.

26 Protegry's Position: The '281 Patent is a continuation of the '201 Patent and is not patentably distinct from the '201 Patent. Additionally, the patents share a common specification.

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Dated: March 25, 2015

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¹⁶ Counsel for Vaultive did not advise whose electronic signature counsel for Protegility should affix.

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4 Dated: March 25, 2015

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

JUDGE JAMES DONATO
UNITED STATES DISTRICT JUDGE

1 Pursuant to Local Rule 5-1(i)(3) regarding signatures, I, Stefan V. Stein, attest that
2 concurrence in the filing of this document has been obtained from each of the other signatories. I
3 declare under penalty of perjury under the laws of the United States of America that the foregoing is
4 true and correct. Executed on March 25, 2015 in Tampa, Florida.

5 /s/ Stefan V. Stein
6 Stefan V. Stein
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A limited liability partnership formed in the State of Delaware

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